

THE LATE
PROCEEDINGS
AND
VOTES
OF THE
PARLIAMENT of Scotland ;
Contained in an
ADDRESS
Delivered to the
KING,
Signed by the Plurality of the Members thereof,
STATED and VINDICATED.

Scilicet res ipsa aspera est, at vos non timetis ; sed inertia & mollitia
animi, alius alium expectantes cunctamini ; videlicet diis immortalibus
confisi, qui hanc rem publ. in maximis saepe periculis servare. At non
votis neq; suppliciis muliebris auxilia deorum parantur. Vigilando,
agendo, bene consulendo prosperè omnia cedunt : ubi socordiae tete atq;
ignaviae tradideris, nequicquam deos implores ; irati infestique sunt.
Cato apud Salust.

G L A S G O W,
Printed by Andrew Hepburn, Anno Dom. 1689.

The Late Proceedings and Votes of the Parliament of Scotland, &c.

TO remain silent under the Aspersions which some busie, but either weak or ill Men, are endeavouring to fasten, not only upon the Proceedings, but upon diverse of the most Honourable and Loyal Members of Parliament, were to be no less treacherous to His Majesty, than careles of the reputation of that whole illustrious Body; as well as of the integrity of those Persons who are said to have so much influenced the Transactions of it; and whose chief Crime (with those that Malign and Traduce them) is their having expressed so much Affection and Zeal for His Majesties Person and Service: And as the representing their Actions in a true light, is all that is needful both to justifie and commend them; so whosoever will be at the Pains to examine them, will find them adjusted to all the Rules of Law, Religion, and Policy. And as it is not to be doubted, but that whensoever the Parliament Assembles, they will both vindicate their Proceedings, in customary and legal Methods, and exert that Authority which is essential to them, over those of their own Members by whom they have been slandered; so all that is now to be endeavoured in their behalf, is to vouchsafe unto the *English* Nation (to whom they have been misrepresented) such a brief Account of their Transactions, with the Occasions, Reasons, and Motives of them; as may not only manifest the Wisdom and Loyalty of that Parliament, but demonstrate beyond all contradiction, that the only design they have been pursuing, was to preserve and maintain His Majesties Honour, secure and establish him an Interest in the Love and Hearts of his People, and make His Throne firm and durable.

It is too evident, either to be denied or apologized for, that all the Laws, Privileges, and Rights of the Kingdom of *Scotland*, have under the Late Reigns, been not only usurped upon and invaded, but subverted and overthrown. For by gradual Inlarg-

ments of the Prerogative, beyond what was allowed by the rules of the Constitution and the Statutes of the Realm, the legal and regular Monarchy of the Nation, was swelled into an Arbitrary and Despotick Power. So that all the Franchises and Rights, which by Original Contracts and Subsequent Laws had been reserved unto the People ; were either overthrown or enjoyed precariously. And we are compelled to say, that the Coalition of *Scotland* with *England*, under one Monarch, without a Union between the Two Nations into one Legislative Body and Civil Government, hath given great advantages to our Late Princes of treating us with a Rigour and Loftiness, that our Ancestors were not accustomed unto : And though a small Acquaintance with the Politicks might have instructed the *English*, that whatsoever received a first Impression amongst us, would sooner or later obtain a second Edition among them ; yet they seem'd either not to have foreseen, or at least not to have resented it, until the Original of King *James's* Absolute Power in *Scotland* (which all Men were bound to obey without reserve) was copied over in *England*, in his claim of Sovereignty in dispensing with those Laws, that were the Fence about their Safety. It was from the unconcernedness, which the *English* have too often testified ; not to say the countenance they have given, in Relation to the Usurpation of our Late Kings over the Laws and Liberties of *Scotland*, that those Princes have despised the applications made unto them, as well by Parliaments, as by the Nobility and Gentry, for Redressing their Grievances ; and that the Nation remained so long discouraged from relieving it self in those Methods that were left it. And as the *Scots* did for many Years sadly feel and experience, into what excess their Kings grew up in Usurping upon their Laws and Liberties ; from a hope and confidence of being justified and supported in those Invasions by the strength and treasure of *England* : So the *English* cannot be altogether insensible, how *Charles* the Second not only confronted their Bill of Exclusion in *England*, with an Act in *Scotland*, for the Hereditary Succession of His Brother, but what large Breaches he was encouraged to make upon their Rights and Priviledges, after his having obtained an assistance of 22000 Men, to be enacted and granted unto him by Law in *Scotland*, and those to be used in what places, and upon what occasions he should please to employ them. Nor are we able sufficiently to express our Obligations to His Present Majesty, who being extremely sensible, that our remaining disunited in our Govern-

Governments, and two distinct Monarchies, though link'd together under one Monarch, hath been one of the great Occasions and chief Sources of our common Miseries and Oppressions ; and being desirous both to redeem us from the illegal Sufferings we have already felt, and to obviate those which might break in upon us under future Reigns, hath therefore invited the Nations to such an Union of strength, Councils and Legislative Authority, as may render them a Defence to each other ; and not instruments and tools of enslaving one another, and a mutual Prey. Which as all wise and good Men do earnestly long for, so the common Interest of the Two Nations obliges them speedily to endeavor.

But we are forced to add, that besides the encouragement which our Late Princes have assumed unto themselves, of Usurping upon the Rights and Liberties of *Scotland*, from an expectation of being supported in it by the Power and Wealth of *England*: There is another Cause unto which much of their Invasion upon the *Scot's Priviledges* is to be ascribed ; and unto which we are forced to resolve many of our Miseries, as the Spring whence they have flowed. For upon the Succession of our Kings to the Crown of *England*, and their fixing their Royal Abode and Regal Seat in that Kingdom ; they are thereupon fall'n into a Method of deriving their knowledg of *Scotish* Laws and Customs, of being informed of the Grievances of that Nation, and of receiving impressions of Persons and Things from one or two Ministers chosen to reside about them, and in order thereunto advanced into places of Honour and Trust ; and who too often have been found to want either the Honesty, Wisdom, or Courage requisite in those upon whom so much comes to be devolved. Surely the World hath had sufficient Evidence in the Ministry of the Late Duke *Lauderdale* ; what mischiefs a Person in his Post about the King may be instrumental in bringing upon the Kingdom of *Scotland* : For though he was endowed with too much Wit and Courage, to be either hector'd or wheedl'd, to be any Mans Tool and Property ; yet through lack of Probity on the one hand, and excess of Ambition on the other, he was easily prevail'd upon to become an Instrument of ruining and enslaving his Country. What may *Scotland* then dread, if a Person should be honoured with the Character and Trust of Secretary for that Kingdom, in whom all the qualifications for so considerable a Station, were the Sighing decently, the entertaining with a grave Nod, or if you please, a Grimace, instead of a solid Reason ; the making those whom he judgeth Court Favourites, his unerring Oracles ; and learning the

Customs,

Customs, Rights and Laws of his Nation, from them that never did, nor were obliged to know them; the recommending those to be Privy-Councillors to the King, who withstood his being so; the favouring those in obtaining the Office of prosecuting Nocents, who stand Accused for endeavouring to suborn Witnesses for destroying the Innocent; and, as an addition to all those Accomplishments, should be so swallowed up in the immoderate love of the World, that instead of having his Thoughts exercised about the Service, Grandeur, and Safety of his Master, should be wholly employ'd how to ingross the considerable Places of the Kingdom, for inriching his Family. Into what Inconveniences may the best Prince be easily drawn, if his Secretary be unable to advise him what he may legally do, and what he may not? With what facility is a weak and easie Person in that Post, misled by an English Minister of State, who has a mind to be revenged upon *Scotland* for rejecting Episcopacy? How may a Crafty and Treacherous Courtier, that hath a purpose to play an after-game for the late King, influence a Scots Secretary unskilled in the Politicks, to imbroyl his present Majesty with his People in *Scotland*; and all for this, that the ~~Yardable~~ Monarch may have a new Throne for his Crowns again? Suppose but one Person in Office about the King for the Affairs of *Scotland*, and him to be extreamly Timerous, What fatal Councils, under the fear of the Whip, may he be prevail'd upon to suggest and give? Hence it is evident what Disadvantages those of that Nation lye under, of having both their Persons and Actions misrepresented, and their Rights and Liberties undermined and invaded; and that as well by reason of the King's residing constantly at so great a distance from them, as because of his having no more Counsellors usually about him, in reference to their Affairs, than who (as a French King was pleased to express it) may all ride upon one Horse.

Now as it was the Oppression and Slavery under which we had been brought, that rendred his Majesties undertaking in coming into these Kingdoms with an armed Force, in order to redeem both Honourable and Just: So it was the hope of being delivered by him from Misery and Bondage, that encouraged us first to invite, and then to cooperate with him in the Prosecution and Accomplishment of his glorious Design. It was the Invasions upon our Laws that we complained of, and from which we desired and endeavoured to be relieved; nor had we any Quarrel with the late King's Counsellors, save as they were Advisers unto, and Instruments

Instruments of over-throwing them. So that if what the Parliament of *Scotland* desires to have redressed, be not something wherein their Laws have been invaded, and their Rights violated, they are to blame for insisting upon it as a Claim of Right ; and should rather crave it as an Act of Grace, if they find the want of it prejudicial to the Nation. But if what is required do either appear to have been wrested from the Nation, or that through their not obtaining it they will be upon all occasions obnoxious to be oppressed and inthrall'd, we may then assure our selves, that His Majesty is too just as well as good to deny them. For as His Majesty doth generously acknowledge, in His Declaration emitted at the *Hague*, for the restoring of the Laws and Liberties of the Kingdom of *Scotland*, 'That they who are concerned in the Laws, Liberties, and Customs Established by Lawful Authority in a Nation, are indispensably bound to endeavor to preserve and maintain the said Laws, Liberties, and Customs ; so he doth in the same Declaration, Sacredly promise, that upon being prosper'd in what he was then undertaking, he will not only free that Kingdom from all hazard of Popery and Arbitrary Power for the future, and deliver it from what at that time did expose it to both, but settle it by Parliament upon such a solid Basis, as to its Religious and Civil concerns, as should most effectually redress all the Grievances under which it had groaned. And therefore as we are not to imagine, that a Parliament, which in the whole Course of its Proceedings hath testified so much Love, Loyalty and Zeal, for His Majesty, both in advancing him unto, and maintaining him in the Throne, will abridge and lessen any of the just and legal Prerogatives of His Crown ; or challenge any Priviledge, Right or Immunity, which their Ancestors have not been Possessed of under the best and most Glorious as well as Ancient Reigns ; so it were unpardonable to think, that a Prince of so much Wisdom, Goodness, Honour, Justice, and Truth, as His Majesty is known to be, should either insist upon the detaining from His People, what some of His Predecessors have by fraud and violence ravished from them ; or should so far depart from His Princely and Sacred Word, as to frustrate the Expectations of His Lieges of having those Grievances redressed, which His Parliament have condescended upon as necessary to be remedied.

But as His Majesties delaying to gratify the desires of His People, is not the effect of Choice, and Inclination, but the result of a force put upon him through the sinestrous Representations given him

him of their Demands, both as illegal and as incroachments upon the Royal Authority : So we do not wonder that the same Person should misreport the Actions of a Parliament, and insinuate into his Master unjust and false glosses of their Votes, who hath had both the Impudence and Treachery to endeavour to Possess the King with Disloyal Characters of his most dutiful, best and useful Subjects. And seeing his Capacity both as a Lawyer and His Majesties Advocate hath not served to instruct him of the danger, nor to restrain him from leasing-making (which is Treason by the Law of *Scotland*) it is to be hop'd that the Persons whom he hath criminally slandered, will have the courage to Impeach him ; and that the Parliament will have the Justice to condemn him to the Punishment that the Law adjudged him unto. Nor can it be matter of Astonishment to any, to find a Person imposing upon His Majesty in reference to the Laws, Rights, and Customs of His Country, who has had the Impudence as well as Malice, to brand those for Republicans, by whose Power, Zeal, and Interest, the Crown came to be conferr'd upon the present King. But they must be Persons of a very short Prospect, who do not perceive, that they who are endeavouring to restore King *James*, account it expedient to blast those in his present Majesties Esteem, under the reproachful name of Republicans, who have the Loyalty and Courage to venture their whole for his Crown and Dignity, and to withstand those ill Men in what they are about. And I will venture to say it freely, that as it is not Names, but Things which wise Men seek and pursue : So there is no more required to the freeing both *Scotland* and *England* from the Common-wealths Men, and from all Republican Principles, but that His Majesty persevere in preserving unto his People their Rights and Liberties, Esteem Parliaments as well his great Council in Arduous Affairs, as the Suppliers of him in his necessities with Money ; and that he make the known Laws the Measure and standard of his Government. While on the contrary it is in the Power of ill Ministers (if His Majesty hearken unto them) to withdraw nine parts of ten of the People in six Months from their Love of Monarchy, and to force them upon wishing for a Common-wealth. And had it not been for the view which the Nations under the last Reign had of their Royal Highnesses the Prince and Princesses of *Orange*, and the assurance they entertained of enjoying their Laws and Priviledges, under their Government and Authority, the methods which the late King took, and the Councells he followed, would instead of the Translation of the

the Crown to Their present Majesties, have put an end to the Monarchy. Nor can any thing ^{to} affright considering Persons ^{more} from addictedness to Monarchy, as the leaving the Nations under the Power, Conduct and Authority, of those very Men, by whose Councils and Management the late King came to forefault His Crown ; seeing some will be so peremptory as to imagine, that it cannot be upon personal liking that they come to be used, but because the nature of the Government requires them, or at least Persons of their Principle, and Political Complexions. But forasmuch as the present Embarrass of His Majesty with his Parliament of *Scotland* is wholly caused by the Advocates abusing His Majesty in the Account he hath given him, both of the Rights and Jurisdictions of the Estates in Parliament Assembled, and of the Laws and Customs of the Kingdom; I shall therefore in Order to the disparaging of him, with all the Wise and Loyal part of Mankind, and the debarring him the King's Ear, and attracting upon him the Royal Indignation : Publish the principle upon which he builds all the Advices he Communicateth to his Master, and with which he seeks to poyson and corrupt His Royal Mind. And this is, that the King hath a seperate Interest from his People, which he ought to pursue in distinction from theirs ; and this we may be sure he doth not fail of insinuating, either immediately unto his Majesty, or at least to those about him ; seeing he had the Folly, as well as the Impudence, both to assert and to seek to justifie it in open and full Parliament. Now whosoever gives himself the trouble of examining the tendency of this Principle, will find the natural Consequences of it to be, That the Prince and People must not only live in a constant jealousie and dread of one another; but must always be imbark'd in an intestine War. Nor is it to be avoided, unless either by the King's arriving at the height of Tyranny, and the Peoples sinking into the Abyss of Slavery, or by the Subjects grasping the whole Power and Authority, and leaving unto the King an empty Name. Yea, it is a destroying of the very end for which Government was ordained of God, and submitted unto by Men ; seeing that was nothing else, but that the whole Society, comprehending Ruler and Ruled, might have but one Common Political Interest; for the Defence and Security whereof each of them were to have their respective Duties allotted unto them : ' Nay, the very ' Prerogative acknowledged to belong unto the King is nothing ' save a Power trusted with him, in relation to some Cases that may ' emerge, by which he may be the better enabled to preserve the

safety of the Community, and to provide for the benefit of the Publick. Nor could Sir John Dalrymple take a more effectual Course to supplant the King in the hearts of his People, and to possess them with a horror of, and an Alienation from his Government, than by his Proclaiming within the Parliament-Walls, That the King hath a seperate Interest from that of his People, and by Consequence that he is to promote and maintain it, with the Neglect if not the Ruine of theirs ; neither is there any thing more probable than that the Advocate vented it in Treachery to his Majesty, out of a Love to to the late King, and a Desire to have him restored, he seeks to undermine and betray. For he hath hereby so alarm'd the People in reference to his Majesties Government, and fill'd them with those dismal apprehensions of what they are to expect, in case the King have a seperate Interest from Theirs, that it will be difficult either to allay their Fears, or to recover them to an intire Trust in his Majesties Justice and Goodness, without removing that Man both from about his Majesties Person, and out of his Councils, who hath given them that frightful Idea of his ensuing Reign. However from this of the Advocate, as well as from innumerable Observations to be made from the present Behaviour and Conduct of those who are received into his Majesties Councils and Service ; after they had not only ministered to King James through the whole course of his Reign, but co-operate dwith him in most, if not all the methods of his Tyranny ; we may rationally venture at this Reflection, (to wit) that they are either endeavouring to justifie the former Reign, by seeking to expose and disgrace this, or that they are studying to cover themselves from what they are obnoxious unto : For their Crimes under the last Government, by reacting and repeating the same, under the Connivance and Indulgence of the present. And as by the First, they evidently shake his Majesties Throne ; so by the Second, they not only abuse the mercy of the Government, but despise its Justice : By the Last,they render the Government Vile and Cheap ; and by the Former they pursue its Subversion : It must without lay a great prejudice upon the Opinion of those that dissuade his Majesty from gratifying his People in these Demands, about which so much noise has been made here as well as there, that they were judged necessary for his Interest as well as the Kingdoms Safety, by, in a manner, the Unanimous Vote of the whole Parliament ; and of which it may be modestly said, that it is not only one of the wisest, but constituted of the most considerable Persons for Quality, Estate and Esteem, in their Country, that ever Scotland ever had :

For

whom

For even the Vote about the Lords of the Session, which is most censured and stumbled at, pass'd the Whole House without any more Dissenting Voices than barely Four ; and of these Sir *John Dalrимple*, who was the leading Man amongst them, sensibly byassed by the Consideration, that, if the Vote obtained, his Father would have been excluded from the Honourable, and to him Beneficial, Place of President, to which he is now advanced. Is it not more likely that these few should act without regard to the King and Kingdoms Interest, and depart from the Laws, Rights and Customs of the Realm, than that the whole body of the Parliament should be unacquainted with what the Constitution, as well as the common Safety of Prince and People, authorize them to claim ? And that they should exceed the measures of Law, Justice, and Equity, in what they demand ? Nor was the Parliament under the Influence of such Motives for encroaching upon the King's Prerogative as these Gentlemen were, for betraying both the Jurisdiction of Parliament, and the Priviledges of the Nation. For having Sacrificed all the Laws and Rights of the Kingdom, under the late Reign, to the Lust and Will of one Arbitrary and Dispotical Monarch ; they could do no less, both by the Rules of Policy and Uniformity, than endeavour to vest his present Majesty in the Robberies of former Princes ; there being no such way for Thieves to escape at the Bar, as to prevail with the Judge to receive and harbour their Stolen Goods. And for the King to rely upon being informed by Sir *John Dalrимple*, what is the Prerogative of the Crown, and what are the Rights and Jurisdictions of Parliament, is as if King *Jame's* Attorney General were to be made the Oracle of the Court, in reference to what Crimes and Offences Peers and Gentlemen were to be Condemned and Executed for ; and for what failures and miscarriages Cities and Corporations were to Forefaul their Charters, and to be deprived of their Franchises. Could the Parliament have been guilty of so Impudent, as well as Criminal a Thing, as to encroach upon the just Prerogatives of the Crown, and to rob his Majesty of his legal Rights, it would have been more for their Profit and Interest to have effectuate it in relation to the disposal of Offices of State, and of Military Commands, than to claim merely a right of interposing ; and that only in the Case of a total vacancy of the Session, about the approving of Persons nominated by His Majesty to judicial Places. For whereas the former would look like the putting themselves into a condition of giving check to their Prince, whenever a Capricio should take them, and

they should fancy themselves aggrieved ; all that can be aimed at, or possibly compassed by the latter, is to have justice equally administered according to the known Laws, which is no less his Majesties Interest than his Duty, to make Wise and Careful Provision for. In a Word, it would seem to command as well as to bespeak, that a whole Parliament, who in all other Proceedings, have Acted with the highest Prudence, Temperance and Justice ; and where there are so many Persons of Vertue, Honor, Probity and Knowledge of the Laws and Customs of the Nation, should be more regardful of Voting justly, and challenging nothing but their legal Rights, than that only Four Men should be found insisting upon what is Right ; and they, such as most of them, have been Tools, and Instruments in the breaches made upon the Rights and Liberties of the Nation.

And as the whole blame is to be intirely lodged upon a few Ministers about his Majesty, both as to the delay that hath been given to redrefs of any of the Scots Grievances, and as to the disputing of the Equity and Justice of actually relieving them from some ; so besides the Confidence that all good Men are possessed with from the consideration of his Majesty's Wisdom and Goodnes, that all will be at last accommodated to the King's Honour, and the Peoples universal Satisfaction ; the Concessions his Majesty hath lately granted with reference to the Articles, even against the Opinion of his Ministers is as an Earnest and Pledge what his People may exspect in reference to the rest, if it can be made appear that what is further insisted upon, and humbly desired of him, is the relieving of his Subjects, and not the robbing of himself ; the being kind to his People, and not unjust to the Crown, and the exercising Mercy to all, without being cruel and unrighteous to any. So that we are become obliged in point of Duty to his Majesty, before whom our demands and claims lye, and from the respect we owe to the English Nation, among whom these matters are both publickly discoursed, and differently represented and censured : And finally, by the Justice we account due to the Parliament of *Scotland*, whose Moderation is not only questioned by reason of their demands, but also their Loyalty : I say, we are become obliged by all these Motives and Inducements, to enter into a detail of the several particulars in Controversy between some of his Majesty's Ministers, and the Parliament of *Scotland* ; and not only to state with what distinctness we are able the several Heads subjected to debate, but to give all that support enforcement from Reason,

Believe

and

Reason, Law and Custom, to the Expediency as well as Equity of them, that we judge to be requisite ; and that we can dispatch in the narrow room which we have confined our selves unto.

In pursuance of which undertaking, We will begin with the Vote to which the Royal Assent is not given; that referreth to the disabling and precluding Persons from publick Trusts and Employes. And this we the rather do, both because we can discharge our Hands the soonest of it, and because it is the most censured by some of the English, from an apprehension that what of this Nature passeth into an Act at *Edinburgh*, may be drawn into President at *Westminster*. But that every one may judge of it, and what shall be offered in the vindication of the Necessity and Justice thereof, I shall present the Reader with a transcript of the Vote : ' The King and Queens Majesties considering that the Estates of this Kingdom have by their Vote declared their Sense and Opinion, that such as have in the former evil Government been grievous to the Nation, or have shewed disaffection to the happy change, by the blessing of God now brought about, or have been retarders and obstructors of the good Designs of the said Estates in their meeting, are not fit to be employ'd in the management of the Affairs of this Kingdom ; Do with the advice and consent of the Estates of Parliament now Assembled, Statute and Ordain, That no Person of whatsoever Rank or Degree, who in the former evil Government have been grievous to the Nation, by Acting in the In-
croachments mentioned in the Articles of the *clairs* of Right, which are declared to be contrary to Law, or who have shewed disaffection to the happy change, by the blessing of God now brought about, by Acting in opposition thereto, since the time that the King and Queen now Reigning were Proclaimed, or who hath been a retarder or obstructor of the good Designs of the said Estates : *Viz.* The securing the Protestant Religion, the settling the Crown, the establishing the Rights of the Leiges, and the redressing their Grievances, by Acting contrary to these good Designs, since the time that they became publick by Votes and Acts of the meeting, be allowed to possess or be admitted into any publick Trust, Place, or Employment under their Majesties in this Kingdom.

I suppose the Reader by this time surprized at the unreasonableness of the Age we live in, that there should be Men found so void of Sense and Understanding, as to spy out any thing here that deserves to be clamor'd against, or which is worthy to be complain'd of :

of: Every Line breathes of that Lenity and Moderation, that it favours rather of a defect of Justice than of any excess of it; and the utmost hereby designed is only a disabling a few wicked Men from ruining us for the future, and not a punishing of them for what they have done; for as there are none excepted as to Life, so the few designed to be debarred from Offices are described and charactered after such a manner, that the very employing them will dishonor his Majesty, and disgrace his Government. There is no abridging his Majesties mercy, only an endeavour to maintain the justice of his undertaking in coming to deliver us. For having charged the late King's evil Counsellors, and them only, with the Crimes upon which he grounded both the Righteousness and the Necessity of his Expedition: Whosoever is so villainous as to advise him to use them can design no less than deriving an Asperion upon his Wisdom, Justice, and Sincerity: And if the Nations be not delivered from those against whom he declared, how shall we be able to answer his Enemies, who accuse his coming hither to have been upon another Motive? For what his Friends affirm to have been bestowed upon him as the Reward only of his Expedition, and of the Deliverance he wrought out for us; his Adversaries will be encouraged both to believe and say was the Principal, if not sole end of it: Nor is it merely needful in order to the Vindication of his Majesties glorious Undertaking in coming into Britain: That they who were the Instruments of our Slavery and Oppression under the former Government, should be precluded from all Share of the Administration under this: But it is also necessary for the reconciling the Love and Obedience of the People to his Majesties Person and Authority. Courtiers may fancy that if one be able he is qualified without other Ingredients to be a Minister of State: But the most part of Mankind do always look for some degrees of honesty in those advanced into the Chief Offices in the Government. Nor will People easily believe, that they who betrayed their Laws, Rights and Priviledges, under one Reign, will ever Administer Justice equally, or defend them in their Properties under another. Men may have present Ease, but they will be always in fear whilst they remain in the hands of their old Oppressors. It is impossible to keep up in the minds of the Vulgar, honourable Thoughts of King *William's* Government, if he will choose to work with King *James's* Tools. Whosoever Counsels his Majesty to employ those that were the Instruments of the former Tyranny, must intend to bring him under a Suspicion both of
ap-

approving that, and of designing the like. No man enviieth his Majesties pardoning the worst of his and the Kingdoms Enemies, but we cannot avoid pittyng him, and bewailing our selves that he is perswaded to use them ; yet the Royal forgiueness ought to confine it self to limits ; and much more should a Prince set Bounds to himself in the Honours and Preferments which he is pleased to bestow. Now having mentioned his Majesties Grace, I'll venture to say, that after all the Mercy he hath exercised towards his own and his Peoples Enemies, there is not one either Converted to his Interest by it, or that reckons himself obliged to him for it. But instead of attributing their impurity to His Majesties Grace, they ascribe it to the Pusillanimity of the Government ; and in the room of being brought over to serve him, they are emboldened to go on in their Conspiracies against His Person and Dignity. Nor will they ever account themselves indebted to his Mercy till he hath made some of them the Objects of his Justice. But to return to what I am upon ; should not such an easie Animadversion be inflicted upon those who have oppressed us, as the being shut out from Trusts and Employes in the Government, We should both tempt them and others to repeat the same Crimes upon the first opportunity that is offer'd unto them. Yea, if instead of falling under such a gentle Mortification, they should be preferred to the chief places of Honour and Profit in the Kingdom, Villainy will be committed in order to Merit ; and Men of brutal and profligate Principles, will seek to exceed in Unjustice and Treachery, that they may be thought to excell in Desert. And though through the Moderation, Goodness, Wisdom and Justice of Their Majesties, we may escape the Consequences of such a Method during Their Reign, (which I pray God may be long) yet Posterity will loose most of the benefit of this Revolution, for want of adjudging those to punishment that have been Traytors to Societies, and Cannibals to Mankind in this Age, whereby to deter others from being such in the next. The Council given to Princes by the Spream Sovereign by whom they Reign, is that they should punish exorbitant Offenders, to instruct others to fear and forbear doing wickedly : But the Advice thrust upon His Majesty by some ill Men about him, is that he should cherish and advance them without regard to the effects that may attend it. What a strange Idea will it give the World of our Government, if the rewards of Virtue be made the recompenses of Crimes. And how shall we list up our Faces to God or Men, if the Malefactors under the last

last Reign, not only escape under this without Chastisement, but inherit the Preferments and Emoluments of it. If what I have said be not sufficient to justify, both the expediency and equity of the forementioned Vote, I hope the Experience the King hath had of that sort of People, since he received them into his particular Favour, and Principal Service, will reconcile him unto a better Opinion of it, and shew him the necessity of turning those out of Office whom his Parliament would have prevented his taking in. Both the Nations are sensible of His Majesties being betray'd, both in his Councils, and in his Affairs; and it is very easy to guess by whom it is done. For none so likely to undermine his Throne, as they who endeavoured to hinder and obstruct his Ascending to it: Nor can any Man be Traytors to this King but they who were the Instruments of the last King's Tyranny. The Cobler's Auls and Ends are unsuitable Furniture in the Painters Shop. Neither will they ever serve this King with faithfulness in his vindicating the Kingdoms into Liberty, who were the Sworn Vassals to his Predecessors Despotical Will, and his Tools for oppressing and enslaving the Nations. Besides the damage they have brought upon the Nations, and the Treasure they have unprofitably wasted: They have been the Occasion of loosing His Majesty more Honour in one Year, than all his Foreign Campaigns ever did since he first Commanded Armies, and presidèd in Councils; and should he be prevailed upon by the Adulation and Artifice of any about him to trust the Conduct and Management of his Affairs in the same Hands for one other Year, it may be easily foretold, without Consulting the Stars, that we shall not be in a Condition on the third to save either him or our selves. And as we have no distinct Interest from His Majesties, so all we desire is, that he would vigorously Espouse and Assert his own, upon which we shall both believe and Proclaim our selves happy. For the Vipers durst not hiss but for the warmth they receive through being lodg'd in his Bosom. But to conclude this head; I am extreamly mistaken, if they who have occasioned and promoted the Quarrelling at the forementioned Vote do not find that they have Consulted worse for themselves, than was designed or intended by those who they account for their Enemies. For this Parliament will undoubtedly at their next Assembling, be so far from departing from what they have Voted, that instead of acquiescing there, and being contented with the having the betrayers of their Laws, the Oppressors and Murderers of the Leiges, and the

the Obstructors of the King and Kingdoms Establishment, only debarr'd and excluded from Places of Preferment, Profit, and Trust, in the Government; that they will be justly provoked, and see it to be indispensably necessary to Impeach and Proceed Capitally against some of them. Their despising as well as refusing of lenity, will derive upon them the severities their Crimes at first deserved, but which that Prudent, Temperate, and Indulgent Senate, were willing to have mitigated by exchange of them into Milder. And as we are fully assured, that so wise and good a Prince as His Majesty, can never entertain either mean or distrustfull thoughts of a Parliament, that hath given him so many and eminent Testimonies of their Loyalty, much less be prevailed upon to Dissolve them, while the Nation is in so Distressed and Unsettled a Condition; an Armed Enemy in its Bowels, and the ferment every where so high, that nothing can allay it, but their being continued, and being allowed to meet at the appointed Day to which they are Adjourned, so we are no less assured that they who are said to be the Zealots in this Parliament, and to have the chief Conduct of, and the prevailing sway in all busines and Affairs that come before it, can neither miss being chosen into, nor have less Interest and Esteem in another. So long as Persons of Fortune, Quality, and Interest continue to assert the Laws and Rights of their Country, and to pursue the joyn't Interest of the King and Kingdom; the Obloquies cast upon them by such as dread and dislike their Courage and Integrity, will only increase their Reputation, and Oblige all those Senators and Members of Parliament, that are honest to put the more value upon them. But to Supersede all fear of this Parliaments being Dissolved, without both Assembling and Dispatching busines, the King by a Law, to which the Royal Assent was given the last Session, Abridged himself of all Power in that Matter. For in the Act that past the first of *July*, whereby Prelacy and the Superiority of any Office in the Church above Presbyters, is abolished, it is Declared, 'That the King and Queens Majesties, 'with the Advice and Consent of the Estates of this Parliament, 'will settle by Law that Church Government in the Kingdom, 'which is most Agreeable to the Inclinations of the People. So that whosoever shall have the Impudence to advise His Majesty to Dissolve this Parliament, before there be by Law some Government erected in the Church: Doth both tempt him to violate

late his Faith, and to trample upon one Express Statute, to which himself hath given the Royal Assent.

The next contested Vote that we are to Address our selves unto, and wherof we are to demonstrate the Legality, Reasonableness, and Necessity, is that which relates unto the Privilege of the Estates of Parliament, in nominating and appointing Committees, of which I do here subjoyn an Authentick Copy.

Forasmuch as the meeting of the Estates of this Kingdom, did by their Vote of the Eleventh of April last represent among other Grievances that the Committee of Parliament called the Articles is a great Grievance to the Nation and that there ought to be no Committees of Parliament but such as are freely Chosen by the Estates to prepare Motions and Overtures that are first Tabled in the House. Therefore Their Majesties with the Advice and Consent of the Estates of Parliament do Enact and Declare that it is the undoubted Privilege of the three Estates of Parliament to Nominate and Appoint Committees of Parliament of what Number of Members they please being equal of every Estate and Chosen by the respective Estates. *Viz.* the Noblemen, by the Estate of the Noblemen, the Barons by the Estate of the Barons. And the Burroughs by the Estate of the Burroughs for preparing Motions and Overtures that are first made in the House, or that the House may Treat, Vote and Conclude upon matters brought in plain Parliament without remitting them to any Committee if they think fit: Or that the House may appoint Plurality of Committees for any Motions or Overtures, that need to be prepared or digested for them: Declaring hereby that no Officers of State are to be Members except they be Chosen. And hereby rescinds the first Act of the Third Session of the first Parliament of King *Charles* the Second and all other Laws and Customs Establishing the manner of Election and Power of any Committees of Parliament, in so far as they are not conform to this Act. So sensible was the Meeting of the Estates that the Committee of Articles was according to late Custom, Regulation, and Practice, an intollorable Grievance to the Kingdom, and a high Incroachment upon the Liberty and Jurisdiction of Parliament; that before the Disposal of the Crown to Their present Majesties, they made their being relieved from it one of the Stipulations, and an Article of Contract; upon which Their Majesties had the Crown conferred upon them, and upon which the People agreed to yield them Obedience and Subjection. For among several things which

which they Covenanted as well as provided, for the Redressing of when in the Name both of themselves and of the whole People of *Scotland*, whom they Represented, they yielded up, and conveyed over the Crown of that Kingdom to *William* and *Mary*: This was the first Grievance that they mentioned and made it a matter of Bargain and Compact, as well of Petition and desire as to be eas'd from it. The words that were Proposed and Read to Their Majesties in the Banqueting-House, upon that Solemn Occasion of presenting them with the Instrument of Government are as followeth, ' The Estates of the Kingdom of *Scotland* do represent, That the Committee of Parliament called the Articles is a great Grievance to the Nation, and that there ought to be no Committees of Parliament, but such as are freely chosen by the Estates to prepare Motions and Overtures, that are first made in the House. What ill Men must they now be, that durst advise a Prince of that Honour, Veracity, and inviolable Faith, as His Majesty is universally known and acknowledged to be, to delay or clog the satisfying of his People in the foregoing particular: Seeing the meer Procrastinating and Adjourning the giving them contentment in it, hath a visible and natural tendency, if possible, to the weakning their Faith and Confidence both in his truth and goodness. It would appear, that some have a mind to make their Master seem faithless, to justifie their being truly such themselves: Or else they have a design to vindicate King *James*'s breach of all stipulations and promises, by persuading King *William* to do the same. Or which is extreme likely, they would by His present Majesties departure from that seeming Compact, upon which he received the Crown, reflect folly and injustice upon the Parliaments Depositing the Late King, for his violating the Original Contract.

But that we may discourse intelligibly of that Committee called the Articles, it will be needful to give some brief account both of what it originally was, and what by degrees it grew up, or rather degenerated into, till it became at last an unsupportable grievance to the Nation, and rendered Parliaments either wholly useles, or meer Instruments for pursuing and executing the Kings Will. Now by what appeareth either from our History, Records or Statute Books; there was no such thing anciently as a Committee or Lords of Articles, but every thing was as well originally moved as debated and concluded in full Parliament. For the first mention we meet with in our Records of Lords of the Articles, is in the year 1466. Under the Reign of King *James* the

Third : Where we find, that upon the Convention of the Estates of Parliament, they not only chose so many from among themselves, to be Judges in Civil and Criminal Causes ; who are styled *Domini ad querelas*, there being then no Judicial Court, save what the Parliament constituted from time to time out of their own Body : But that they also Elected three Persons for the Clergy, three for the Barons, and three for the Burgeses, to consider of, and prepare matters fit and needful for the House to bring into debate, and to come to Votes and Resolutions about. By which it seems that this Committee of the Articles had no auspicious beginning, having it's rise under one of the worst of all our Kings, and who came to the most unhappy and unfortunate end : However there appears no such thing here, as that the Officers of State were to be supernumerary to those chosen by the Parliament ; or that the King either by himself, or by one representing him, chose any of them ; but it is evident from the Record, that they were wholly and entirely Elected by the States themselves in Parliament Assembled. And though the being an Officer of State, was never esteemed a ground disabling, and incapacitating a Person from being a Member of the Committee of Articles ; yet upon a Perusal of the Records, I do not find that any Officers of State made a part of the Lords of the Articles, until the year 1567. and their being then of that Number was not *ratione Officii*, but by reason of the Parliaments having Elected them into that Station. For whosoever consults the Records of Parliament of the years, 1467. 1475. 1524. 1526. 1528. 1537. 1542. 1543. will find that the Officers of State were so far from being supernumerary in the Committees of the Articles, that they were not so much as elected into that Trust, nor had any room or place allowed them there ; though it appears by the Records of all those Parliaments, that there were Members chosen by and out of the respective Estates, sometimes in larger, and sometimes in lesser numbers to make up and constitute such Committees. Yea, I cannot but add, that our not meeting with any mention of the Lords of Articles of the Parliaments Assembled, and held 1469. 1471. 1474. 1481. 1483. 1488. 1489. 1491. 1493. 1505. 1515. 1522. 1535. 1540. 1546. 1551. is an undoubted Evidence, that the having Committees of the Articles was not a thing of indispensable necessity, or to which Parliaments were legally obliged ; but that it was a matter of Arbitrary pleasure, and that they were chosen or omitted, as the House thought to be most useful

useful and convenient for the management and dispatch of their Affairs. And though it cannot be denied, but that after the year 1567. some of the Officers of State, were now and then thought worthy by reason of their moral and intellectual abilities to be chosen among others for Lords of the Articles, as in the Parliaments held in the years 1581. and 1593. yet it is most evident, that they were not Elected into that Committee by vertue and reason of their Offices, much less sat there as supernumerary to those chosen by the Estates; forasmuch as in other Parliaments, particularly in those held in the years 1587. 1592. and 1594. there is no intelligence report or remembrance of them, in the Registers and Lists of those of whom the forementioned Committees were made up and Constituted. And that which puts it beyond all possibility of being controled (save either by ignorant, or by impudent and self-condemned Men) that no Officers of State had right anciently to be of the Committee of Articles, unless previously Chosen by the Estates of Parliament, is the 37. act. Parl. 11. of *James the Sixth*: Where Provision being made by Law about the Number whereof that Committee should be Constituted; It is, without the least mention or suggestion of those Officers of State, enacted and ordained, *that the Number of the Lords of Articles be equal in each Estate, and that the fewest number of every Estate be Six, and the greatest number Ten.* Yea so far were those stiled Lords of Articles, from having originally the sole Power of preparing matters, and of bringing in Motions and Overtures, to be considered and debated in Parliament; exclusive of other Members of the House, who were not of that Committee; that both at first, and for a long tract of time afterwards, they were not so much as a Committee of Articles, of, and to that Parliament by which they were Chosen, and of which they were Sitting and Actual Members; but were only so in reference to the next Parliament that should Succeed; against whose meeting they were to prepare such things as they should judg to be most fit, and expedient to be then taken into consideration; but still with a right as well as with a Liberty reserved to that future Parliament, not only to receive or reject what should be thus matured and offered unto them; but to admit whatsoever overtures they pleased, that should be made unto them by any of the Members of their own House. It was the Ancient Custom and Practice of *Scotland*, that the Sitting Parliament antecedently to its Dissolution and Separating, Elected so many

many from among themselves, who were in the interval betwixt that and the next Parliament, to make inquiry into the necessities of the Lieges, and into the State of the Kingdom; and accordingly to draw up and prepare such Overtures, as should carry that relief and remedy in them, which might give a Redress unto grievances, be a means of preserving the Nation in safety, and of promoting the prosperity of the Subjects. Now from this harmless beginning of the Committee of Articles, it hath, through the Usurpation of our Kings, especially after their Succession to the Crown of *England*, and the remove of their Royal Abode thither, and through the officiousness of publick Ministers to the Prince, and treachery to their Country; grown up at last to that exorbitancy, that it is not only become burthensome but intolerable. For by reason of the Parliaments coming at last to commit the inspection into all Affairs, and preparing all remedies unto grievances, into a few hands, and those to be unchangeable during a whole Session. Our Late Monarchs obtained such a handle whereby they might incroach upon the Jurisdiction of Parliaments, and the Liberties of the People, that they soon improv'd it, to the illuding of all the good that the Kingdom was to expect from Parliaments, and to the making those who were designed to be the means of our safety, become the Instruments of our Ruin. For the accomplishment whereof, and the more effectual rendring the Lords of Articles, Vassals unto the Monarch's Will, and Tools for executing his Pleasure; they first prevailed to have the Officers of State admitted into that Committee as Supernumeraries, and that, without being Nominated and Elected by the Estates in Parliament, they should have a right to sit there *Ratione Officii*, by vertue of the imployments they held in the Government. For King *James* the Sixth being by the adulation of the *English* Bishops, brought intirely over to their Interest; as well as to their Opinions, about Church Discipline and Worship, and having a mind in requital to the Church of *Scotland*, for all the kindness they had expressed to him, both in his Infancy and riper years, to obtrude upon them the *English* Ceremonies, he did in order to the more easie effectuating of it, flatter, cajole, and bribe, as well as huff, and awe the Parliament anno 1621. to allow the Officers of State to Sit as Supernumeraries, without being chosen in the Committee of Articles. And thus he forced those Innovations, commonly known by the Name of the Five Articles of *Perth*, upon the poor Church of *Scot-*

Scotland, having by those Supernumerary Officers, not only so moulded the Committee of Articles, as to pass and present them, but thereby laid the Foundation of their being ordained and enacted in the House, and to make the Lords of Articles yet more grievous and intollerable, King Charles the First, (whose Invasions upon the Rights and Liberties of his People, proved Fatal both to him and them) overthrew the Ancient Method of their Elections, and brought the choice of them into such a Channel, as could issue in no less than Tyranny in the Sovereign, and Slavery in the Subjects. For whereas by Law and Custom, the Lords were to choose the Lords, and the Barons to choose the Barons; &c. Charles the First did in his Parliament held Anno 1633. when he was in the heighth of his greatnes, change and innovate this Method, and having divested the whole respective Estates, of choosing severally their respective Commissioners; he assumed a Power to himself, with a right of consigning it over to his Commissioner in Parliament, for choosing Eight Bishops, consigning to the said Eight Bishops, a Power of choosing Eight Noblemen, and restraining to the said Eight Noblemen, together with the aforesaid Eight Bishops, a Power of choosing Eight Barons, and Eight Burghes; and that these in conjunction with the Officers of State as Supernumeraries, should be the whole and sole Lords of Articles, exclusive of all others. Finally, to render that Committee yet more insupportable, the sole Right as well as Liberty, of bringing in Motions of making Overtures, for redressing Wrongs; and of proposing means and expedients, either for the relief or the safety and benefit of the Subject, is intirely restrained unto, and lodged wholly in this Committee: Neither is it by our late Practice lawfull for any Member or Members, that are not of that packt Club and Society, to make the least proposal or motion, either for the repealing of an ill Law, or for the enacting of a good. So that I would now hope, that the meer representing of this Committee of Articles, as it is now transformed and degenerate from what it formerly was, is enough to justifie the Vote of the Present Parliament, about the having that grievance redressed, and to vindicate them from the Obloquie they have lain under, for insisting upon having Parliaments loosened from those Fetters. For where is the Liberty of Speech, and Voting essential to a Legislative Body, if Parliaments must be thus muzzled? How is a Kingdom eluded out of all the good that they expect from any Parliament, if their Re-

pre-

presentatives may neither lay open their Sores, nor offer Plasters in order to their Cure? How miserably would things have proceeded in the late Meeting of Estates, if nothing was to have been before them; but what a Committee where Eight Scotch Bishops, were to have the Electing of Eight Noblemen; and they together the choosing of the rest, with King James's Officers of State Supernumerary, that should have prepared Overtures for that Great and Illustrious Assembly? I dare say, that the being bound up to such a Method, would have more effectually secured the Throne to King James, than all the Swords of his Partizans. Nor can Parliaments be designed for any thing, under such a Constitution of a constant Committee, with the Officers of State Supernumerary, but to enlarge the Prerogative of the Crown, and to levy Money from the People. But blessed be God his Majesty wants not inclination to deliver his People from this, and from all other Grievances, but only wants Persons about him to set them in that Light that he may discern them. Therefore we complain not of his Majesty for the delaying the satisfaction that his People waited for; but we complain of those ill Men, who told him that to part with the Lords of the Articles, was to throw away the brightest Jewel of his Crown. Whereas it appears from what hath been said, that there is nothing desired whereby his Majesty's legal Prerogative can be diminished and lessened, but that all which is humbly craved, is the redeeming his Parliament and People from an ignominious and burthensom Yoke; and their being reliev'd from the Invasions and Usurpations made upon their Laws and Customs, by the Craft and Violence of some of their Monarchs. Nay the very contending for the continuing the Officers of State as Supernumerary in their Committees, without the being Elect'd unto them by the Estates in Parliament; is both an aspersion upon the Wisdom of the Parliament, as if they knew not how to pay the respect and deference due to those Officers till compell'd unto it, and a reflection upon their Loyalty, as if no Persons could be tender or regardful of His Majesties Interest among the Committees of Parliament, unless received into the Kings immediate Service, and brought under the influence of Honors and Emoluments. But whosoever suggests this unto the King, must be one that is accustomed to draw other Mens Pictures by his own Original; and who by acting in all things himself as a Mercenary, strives to represent the rest of Mankind, as equally base and villainous. Nor can that advice insinuated into

✓ Officers

2

into His Majesty, of having the Officers of State Supernumerary in the Committees of Parliament, be supported by any season but what borders upon Treason; which is the King's having and being obliged to pursue a separate Interest from that of his People; and as nothing would more Universally loose His Majesty the Hearts of his People, than the being wrought into a belief of it; so whatsoever is likely to tempt them into such a Perswasion, is at all times, but especially at this, to be industriously avoided by the King.

The only thing remaining, wherein his Majesty's Parliament of *Scotland* seems to be misunderstood by him, is their Vote concerning the Nomination of the ordinary Lords of the Session, and the Election of the President. For that which they propose, both as required by and agreeable unto their Laws, and as necessary in order to the equal Administration of Justice, is that the ordinary Lords being in a total Vacation nominated by the King, they are to be Tryed and Admitted, or Rejected by Parliament; and that in a particular Vacation being likewise nominated by the King, they are to be Tryed and Admitted, or Rejected, by the other Lords of Session; and that in both Cases the President be chosen by the Lords of Session themselves. Now this being the great Matter wherein his Parliament is represented unto him, as endeavouring to incroach upon, and subvert his Royal Prerogative; and it being the particular in reference unto which he hath been prevailed upon to exert an Authority to that height and degree, that there seems no room left for any expedient, but that either the Parliament must depart from their Vote, or that his Majesty would be pleas'd to part with those, who through abusing his Goodness, have misled him into an exercise of Royal Power which the Laws cannot justify. It will be absolutely needful, that the Reader, in order to his being inable to form a Right and Impartial Judgment of this perplexed and intangled Affair, should be first made acquainted with the Vote it self, as well as afterwards be informed of what is to be said in the Vindication of it. The Words therefore of the Vote are as followeth; *The King and Queens Majesties considering that by the Laws of the Kingdom, when the place of an Ordinary Lord of the Session doth Vacate, it is to be supplied by the Kings nomination of a fit and qualified Person for the said Office, and presenting him to the rest of the Lords to be tryed, and admitted or rejected by them: And that there is now a total Vacancy of the Lords of the Session, by the happy change through the Blessing of God now brought about, so that there*

there can be no such Tryal by the Lords, and that when such total Vacancies have fallen out, the Lords were either nominated by King and Parliament joynly, or if they were nominated by the King the nomination was approved and the Lords so nominated were admitted by the Parliament, Therefore Their Majesties do Declare, that they will nominate fit and qualified Persons to the said Offices, and present them to the Parliament to be tryed and admitted or rejected by them: Like as Their Majesties with the advice and consent of the Estates in Parliament Statute and Ordain, that in all time hereafter, when any such total Vacancy shall occur, the nomination of the Lords of the Session shall be by the King or Queen for the time being; and in case of their minority by their regent, they nominating fit and qualified Persons to the said Offices and presenting them to the Parliament to be tryed, and admitted or rejected in manner aforesaid. Like as Their Majesties with the advice and consent aforesaid ratify and approve the 93 Act of the sixth Parliament of King James the Sixth, anent the admission of the Ordinary Lords of Session, and Reformation of certain abuses therein: And the 132 Act of the Twelfth Parliament of King James the Sixth anent the Jurisdiction, Presentation, Qualities and Age of the Lords of the Session, in the whole Heads, Clauses, and Articles thereof, and particularly the Clause contained in the said two Acts, Declaring that in all times thereafter, when any place should be Vacant in the Session, that His Majesty should nominate and present thereunto a Man fearing God, of good Literature, Prudick, Judgment, and Understanding in the Laws, of good Fame, having sufficient Living of his own, worth Twenty Chalders of victual of yearly Rent, and who can make good expedition and dispatch in matters touching the Lieges of the Realm; and likewise that Clause contained in the 93 Act of the Sixth Parliament of King James the Sixth, Declaring that the President of the Colledge of Justice, shall be Elected by the whole Senate thereof, being a Man of the Conditions and Qualities above written, for Chosing and Electing of whom the King's Majesty and Estates dispense with that first part of the Institution of the Colledge of Justice anent the Election of the President, Declaring that in case of the absence of the Chancellor and President for the time it shall be lawfull for the Lords to Chose and Elect any one of their own Number, whom they think qualified and worshipful, who shall be called Vice-President for using of the said Office, ay and while the Return of the said Chancellour and President. Like as Their Majesties, with advice and consent aforesaid, Statute and Ordain, that the whole qualifications abovementioned, be duly observed in the admission of the Lords of the Session, in all time coming, and that as well in the case of a total, as of a single vacancy. This being the

Vote

Vote so declaimed against and in contempt whereof, and in opposition whereunto, some Persons having surreptitiously and fraudulently obtained Warrant, Countenance and Authority, from the King are so venturous as to dare to Act: We shall, both withal the Loyalty and Modesty that becomes a Subject and an honest Man, and yet with Freedom and Plainness ~~hath~~ hath no other design, save to serve God, his King and his Country, with Uprightness and Integrity should value himself upon, endeavour to vindicate the Wisdom, as well as the Justice of the Parliament in the forementioned Vote. In the performing whereof, withal that exactnes which brevity will allow, I shall begin with an account of the first Administration of civil Justice in the Kingdom of *Scotland* that we meet with in our Records. For the Colledge of Justice consisting of those called the Lords of the Session, not having been institute till the Reign of King *James the Fifth*, *Anno 1537*. The Administration of Justice was before that time, not only ambulatory and itinerant, but was discharged and executed by such Members of Parliament as the Estates of the Kingdom, in their several Sessions elected from among themselves, and authorized thereunto. Nor had they only their whole Authority from the Estates in Parliament, but to speak properly, they were Committees of Parliament Authorized to such a Work and Office, and accountable to Parliaments for the discharge of the Trusts committed unto them; for the *Domini electi ad causas*, whom we so often meet with in the Records of Parliament, particularly in those of the Years *1524. 1526. 1528.* were such Members as every respective Parliament elected from within their own Walls, for the Administration of Justice between the King and his Leiges, and between one Subject and another. From whence it appears, that it not only appertained unto the Parliament to see that Justice was duly Administred, but that the Right was Originally in them of Nominating and Ordaining the Administrators of it. Which makes it very improbable, that after their having been possessed of such a right Authority and Jurisdiction for so long time, they should so wholly part from and intirely surrender it, as upon no Occasion or Emergency whatsoever to leave unto themselves a share, or reserve a concern in it. Let us add to this, That when the Colledge of Justice came to be instituted, *Anno 1537. Parl. 5. King James the 5th. Act 36.* though it was Established and Ordained by the Legislative Authority of the King and Estates joynly, and not by an exertion of meer Royal Prerogative, Yet the Estates in Parliament

then Assembled, both took upon them, and were allowed the Nomination and Choice of the President, as well as of all that were then called forth and advanced to be Lords of the Session, or College of Justice, as appears by the 39. and 41. Acts of the aforementioned Parliament. Yea it is further evident from the Records of Parliament, that the Estates of the Kingdom did often in succeeding Parliaments Nominate, Choose and Impower, those very Lords that were actually of the Session to continue in the Administration of Justice, which sheweth beyond all rational contradiction, that they could much less enter upon the Office at first, without their being Chosen and Approved by the Estates in Parliament. Thus *Anno 1542.* being the First of *Mary*, we find the President with the rest of the Lords of Session Chosen and Impowered a new, as *Audidores ad causas*, for the hearing and deciding Civil and Criminal Causes. And again we find the Parliament of the Second of *Mary*, *Anno 1543.* not only ratifying by the Legislative Authority of the Queen and Estates, the Institution of the College of Justice, but we find the Estates alone nominating and choosing *ad causas*, the President *cum ceteris Dominis Sessionis & Collegii Justitiae*. But forasmuch as there was a change given afterwards by Laws to this Course and Method, and a new Regulation ordained by subsequent Statutes of the College of Justice, wherein both the qualifications of those that are to be Chosen Lords of the Session, and the manner of their Approbation are required and appointed: We are therefore obliged in the next place to look into those Laws, and to examine whether they detract from the Prudence, and weaken the Justice of the Parliament, in their forementioned Vote; or whether they not only Countenance and Support, but Justifie and Vindicate them. And We'll begin with the 93 Act 6 Parliament *James 6.* where it being acknowledged, That the Nomination of the Lords of the Session belongeth unto the King, and that he ought to name such as have the Qualifications there required, which are already specified in the aforesaid Vote. It is further added, *That in all time coming, when an ordinary Place becomes vacant in the Session, the Person nominated thereunto by the King, shall be sufficiently tryed and examined, by a sufficient number of the Ordinary Lords of the College of Justice, for whom it shall be Lawfull to refuse the Person presented unto them, and that the King in that Case shall present another, and that so often until the Person presented be found qualified.* But seeing this Act may be said to have passed in the minority of King *James*, and the force of it be thereupon endeavoured

to

to be eluded, We will therefore consult Act 134. Parl. 12. James 6. wherein, besides a Repeition and a Confirmation of all that is mentioned and ordained in the former Act, there is further added, *That none shall be received to any Place of Senator in the College of Justice, unless he be sufficiently tryed by the whole College of Justice.* Now as those are the Laws relating unto and regulating the Nomination, Examination and Approbation of the Ordinary Lords of the College of Justice, the Practice hath been in all Times conformable thereunto. So that the First Parliament of King Charles the Second, which through the prevailing of the like Folly and Madnes in *Scotland*, which then reigned in *England*, rob'd the Kingdom of many of its Rights and Privileges, to increase and inlarge the Prerogative of the Crown ; yet they were so tender of making any Innovation in this particular, that by their Second Act of that Parliament they Ordain *The Nomination of the Lords of Session to remain as in former Times, preceeding the Year 1637.* And accordingly we find, as there have been several, who upon single Vacancies in former Reigns had been rejected by the Lords of the College of Justice, though nominated by our Kings : So there was one Sir *William Ballanden*, whom *Charles the Second* had nominated and recommended , who upon examination by the rest of the Lords was refused and rejected , as a Person not Qualified according to the Statutes of the Realm. Is it not therefore unreasonable to be imagined, That the King, who upon a single Vacancy cannot constitute one Judge till he be examined and approved, should nevertheless be esteemed impowered to constitute the whole Bench of the College of Justice, without a previous Examination and Approbation ? How improvident were our Parliaments , and how weak and ridiculous are our Laws, if all that is provided for be only the restraining the King from making one Judg that is unqualified ; and at the same time to allow him a Power and Authority of making Fifteen that are unqualified, for such they are to be esteemed till they have been tryed and approved. There can be nothing more unquestionable than that they who are nominated by the King to be Judges ought, according to the Laws of *Scotland*, to be tryed and approved before they be accounted or authorized to sit and act : And therefore there being upon a total Vacancy no Lords of the College of Justice to try, examine and approve those whom the King hath nominated and recommended, it would seem to be uncontroulable by all Persons pretending to reason, and acquainted with our Laws and Customs, That

the

the Right of examining, and of admitting or rejecting them, comes to be devolved upon the Parliament ; which is the whole that is desired in the forementioned Vote. Nor is there any mean, but that they either must ascend the Bench without undergoing a Tryal, or receiving an Approbation, which is openly to affront the Laws ; or else the Power and Right of approving and of accepting or rejecting must be acknowledged to reside in the Estates of Parliament. Nor was this ever denied them in the Case of a total Vacancy under the worst of the foregoing Reigns. Which makes it the more Doleful as well as Amazing, that through the subornation and crafty, but false insinuations of evil Men, there should be an endeavour of wresting it from them under the Reign of so Gracious and Temperate a Prince, whom they with so much Affection and Zeal called and invited to the Throne ; not only ingratitude for his having delivered them from Popery, but out of a hope and prospect of his relieving them from all their other Grievances. It hath been already proved beyond the possibility of a Reply, That the first Institution of the Colledge of Justice, and the Nomination as well as Approbation of those that were then advanced to be Lords of Session, was by the Estates Assembled in Parliament. And I do now further Affirm, that in the two total Vacancies, which are all that have since occurred, besides this that hath now fallen out upon the late happy Revolution, the Estates in Parliament were indisputably allowed, the right of admitting or rejecting those of whom the Colledge of Justice was to be freshly Constituted ; for upon the total Vacancy in the Year, 1641, which was the first that had been from the institution of the Lords of Session, the Parliament not only Challenged the Approving, but they took upon them the joyn Nomination with the King of all the Persons that were to be admitted into and created Members of the Colledge of Justice. But this Example and President I will not insist upon, seeing there was something unjust and illegal in it, as well as something just and legal. For not being satisfied with the right of admitting, to which Law and Reason gave them an unquestionable Title, they usurped upon the Crown, and took upon them the Power of nominating, which had been granted by former Laws unto the King. Let us therefore see what was done upon that other total Vacancy, which occurred the Restauration of *Charles* the Second, when nothing would have been departed from by the King, that he could have withheld without the highest Injustice ;
 nor

nor any thing either claimed or accepted by the Parliament that they could have sacrificed or surrendered without becoming obnoxious to eminent dangers; and yet even then the King having nominated those whom he designed for the Lords of Session, the Approbation of them was submitted unto the Parliament; and the Estates having in full Parliament consider'd them, they admitted and received them. It is true that the Parliament did not bring them single before them, and there Try and Examine them, not because they might not have done it, but because there was no need of it, being all of them of that Eminency as to be Universally and Notoriously known to have all the Qualifications required by the Statutes. Yea though that Parliament was abundantly Officious towards the Crown, and Loyal to that excess to the King, as to be Disloyal to their Country, and unfaithful to their Constituents. Yet in the Second Act of their first Session, by which they restore to the King what had been wrested from him in the Parliament 1641, they allow him no more in reference to the Lords of the Colledge of Justice, but the right of nomination as the Crown had enjoyed it preceeding the Year 1637. But I hear there are some who finding His Majesty unalterably resolved not to depart from the known and just Laws of the Land in the Governing of his People, have therefore, to elude the force of what hath been here Represented, and to divert His Majesty from harkning to the humble desires of his Parliament in this matter, been guilty of the Treachery as well as the Impudence, to suggest unto His Majesty that there is not now a total Vacancy, there being of the fifteen nominate by His Majesty for Lords of the Session, three that were antecedently such; and that it belongeth unto them three to try and approve the others; and that what the Parliament pretends unto, being only in the Case of a total Vacancy, is here wholly Superceded, and that for any to insist upon it, is an incroachment upon the Prerogative of the King, and a robbing of the Lords of Session of a Priviledge Vested in them by Law. Now though all that is here insinuated be rather the Offering an Affront to our Understandings than the Accosting us with a reasonable Objection; yet we will so far condescend to the weakness of those that are ignorant of the Laws and Customs of *Scorland*, as to return such a Reply unto it which may not only convince all Mankind of the impertinency of it, but expose those that are the Authors of it, to be either loathed as ill Men, or ridiculed as silly. For First,

First, supposing, That *Staires*, *Newbyth*, and *Mersingtonorne* who are all that can be referred unto in the pretended Objection, did still remain Lords of the Colledge of Justice, by Reason of their having formerly been so: Yet they are too few to constitute a Session, which they ought to be before they take upon them to Try and Approve such as are recommended unto them by the King's nomination. The *Quorum* of which a Session ought to consist, before it can Exercise any Legal Authority, should be Nine, which I think no Arithmetick will make three to be. Nor will my Lord *Staires*, and his Son Sir *John Dalrimele*, find that Succes in their Attempts against the first and self-evident Principles of natural Sciences, and of the Mathematicks, that they have had in Undermining and Subverting the Laws of their Country. Secondly, for any Person named by the King in Order to the being received as a Lord of the Session to be examined and approved by three, though granted to be Actual and Sitting Lords of the Colledge of Justice, is exprefly repugnant to an Act of the Session it self, confirmed by the King's Letter, *Anno 1674*. It being provided by that Act, that when any new Lords of Session, shall be presented by His Majesty for Tryal of their Qualifications, that they shall be present one day in the Outer House, where they are to inspect a Proces that shall be carried to *interloquitor*, and from thence make Report of all the Points therein contained to the whole Lords of Session; and then for compleating their Tryal, shall sit another day in the Inner House; and after the bringing the dispute of some point of Law to a Period, shall give their Opinion about it in presence of all those Lords of which that House doth then consist. Now as this Order and Rule is appointed to be Observed constantly in all time coming, about the Tryal of Lords nominate by the King, and to be admitted, and hath been accordingly Observed and Practiced ever since, till the Present Vacancy; So it is evident to all who have not renounced common sense, that the Regulation, Order, and Method of Tryal, prescribed by the foregoing Act, is altogether impracticable, where the Lords that are to be the Tryers, and Examinants are to be three. But then. Thirdly, It is the most absurd thing imaginable to fancy, That because three of the Lords now nominate by the King were heretofore Lords of Session, that therefore there hath not been a total Vacancy upon this late and happy Revolution. I am sure that in the Parallel Case *Anno 1661*. the Parliament in the Preface unto the Statute, by which they

they admitted those to be Lords of the Session whom the King had then named, they call it a new and intire nomination, which they neither could nor would have done, if they had not judged the Vacancy to be total, and yet three of the Lords then nominated by *Charles the Second*, viz. *Halkarton*, *Cranston*, and *Lee*, had been Lords of Session, and had sat in the College of Justice before that nomination. Fourthly, If *Stairs*, *Newbyth*, and *Mersington*'s having been once Lords of Session be enough to hinder the late Vacation of the Session from being total; then I challenge all the World to tell me what can either make a single, or a total Vacancy, yea if those Gentlemens Places were not voided, after what had befallen them, and the placing others for several years in their room: I do much question whether their death can make their Places Vacant, and whether they may not be as well said to remain Lords of the Session, when they are rotting in their Graves, as to have continued so in the State they were, before His Majesties late nomination of them. For as they all had their Commissions during pleasure, so *Stair's* and *Newbyth's* were recalled and reassumed by King *Charles* of whom they had received them. And I take it for an undoubted Maxim, that he who hath Power and Authority to give, and giveth not during life, may by the same Authority take away at Pleasure, what he hath given. And as for *Mersington* who had his Commission from King *James*, if his place be not rendered Vacant by his Masters having forefaulted the Crown, nothing will or can render it so.

Fifthly, if these Gentlemens having been heretofore Lords of the College of Justice, hindereth the late vacancy from being accounted total; then His Majesties nominating them afresh, was not only superfluous in it self, but an injury unto them. For it was the bringing them to hold that by a new Title, which they had a claim unto, and ought to have been accounted possessed of by an ancient Right. Nor are they obliged for their Places to His Majesties Grace and Bounty but to his Justice. Sixthly, the very form of the presentation by which their nomination is signified, shews that the Vacancy was taken to be total. For it being the constant Custom in all single vacancies, that the name of the Person Succeeded unto, as well as his who is to Succeed, be equally expressed in the Presentation, and there being no such form, but the contrary observed in these Gentlemens Case, it is an Argument that His Majesty took the Vacancy to be total, whatsoever his President, Secretary and Advocate do. Seventhly,

in all Cases where the Vacancy is not Universal the Presentation of those named by the King, is directed to the College of Justice, or the Actual Lords of Session and so our Laws ordain and provide it should be. But the Presentation of those now named to be received and advanced unto the Administration of Justice, or at least of most of them was directed to the Earl of *Craford*, who never was a Lord of the Session, nor yet is : Which is an Evidence, that the holding the late Vacancy not to have been total, was not an Opinion they were led into by truth, but by necessity, and that they have only espoused it to justifie what hath been illegally done. It is yet further alledged, by these cunning Men that have first endeavoured to mislead His Majesty, and now seek by what pretences they may best defend that which they have done ; that though, by the Ancient Laws the King was only trusted with the nomination of the Lords of the Session, and the tryal and approbation of them was lodged elsewhere : Yet that by *Act. II. Parl. I. Charles the Second*, the sole choice and appointment of the Lords of the College of Justice is given unto and settled upon the King. But surely they who make the exception must be Men either of very weak understandings, or of very bad consciences, and they must think they have to do, with a very credulous sort of People, whom they may bubble into the belief of any thing, though never so false and unreasonable, otherwise they would never talk at so ridiculous and impertinent a Rate. For. First, there is nothing granted unto the Crown by that Act, but what was it's ancient and undoubted right, instead of settling any new Prerogative upon the King, the Parliament does only there declare what was anciently the Inherent Privilege of the Crown, and an undoubted part of the Royal Prerogative of the Kings of that Kingdom : Which I am sure that the trying, approving, and accepting or rejecting those nominated for Lords of Session never was, that having been by so many preceding Acts of Parliament, which we have mentioned, settled and vested in other hands. Secondly, whatsoever can be supposed to be granted unto the Crown by *Act. II. Parl. I. Charles the Second*, it doth as much affect a single Vacancy as a total ; the words being, *That it is an inherent Privilege of the Crown, and an undoubted part of the Royal Prerogative of the Kings of Scotland to have the sole choice of the Lords of Session.* Which can import no more, save that they have the sole nomination of them, but not the tryal of their qualifications, seeing all along since, both in that

that Reign, and in the next that ensued, the examination and acceptance or refusal of those that were recommended by the two last Kings upon emergent Vacancies to be Lords of the College of Justice, were always certified to the Actual and Sitting Lords of Session to be by them tryed, and admitted or rejected as they should see cause. Thirdly, what the Gentlemen who make this exception would give the Crown with one hand, they take away with the other. For while they would Preclude the Parliament from taking notice of the qualifications of those who upon a total vacancy are nominated by the King, under a pretence that the sole choice of the Lords of Session, is by the forementioned Statute Declared to be an Inherent Privilege of the Crown: They at the same time seek to skreen and vindicate themselves from the Violation of the other Laws that prescribe the Method of trying and approving those who are nominated now by His Majesty for Lords of the College of Justice, by alledging that *Staines, Newbyth, and Mersington*, are both in a capacity through having been formerly Judges, and are commissionated to try and approve them. Fourthly, all that some apprehend to be contained in the 11. Act. Parl. 1. *Charles the Second* is wholly Narratory, and no part of it Statutory, at least so far as our concernment lyes in it, and as we are therein referred unto other Acts for the knowledg of what is Statuted and Ordained: So upon our application unto, and consulting of Act. 2. Parl. 1. *Charles 2.* all we find there enacted is. *That it is an inherent Privilege of the Crown, and an undoubted part of the Royal Prerogative of the King, to have the sole choice and appointment of the Officers of State and Privy Counsellors, but that he hath only the Nomination of the Lords of Session, as in former times preceding the year 1637.* and what that was we have already shewed, and do find it to be so far from interfering with, or derogating from what the Parliament doth now insist upon and demand that it both Warrants and justifyeth it. I may fiftly subjoyn that upon supposition that the Act. 11. Parl. 1. *Charles the Second* were Statutory, which it no ways is; yet there is a later Act pass'd in the said first Parliament of King *Charles the Second*, though unprinted yet upon Record in our Registers of Parliament, and which was purposely made for the Regulation of the College of Justice, and about the admission of the Lords of Session, as the very title and rubrick bears; Wherein all that we find enacted, is, that the King instead of having the sole choice of the Lords of Session, shall only have the Nomination of them, as the Crown stood possessed of it

in times before the year 1637: and that their admission in all times to come shall be according to the Laws and Acts which were in being before the year which we have already mentioned. So that fancy what they will beyond this, granted unto the King by Act. 11. Yet it is all withdrawn, and reassumed from him, by this later Act of April the 5th.

All that now remains to be further added on this Subject, so far as concerns the controversial part is to inquire whether the King hath at all times the sole Power and Right of chusing and appointing the President of the Session? And we presume with all humilitie to say, that by the Laws of the Kingdom, and according to ancient Practice and Custom, he hath it not, nor can he legally lay claim unto it, seeing by Act. 93. Parl. 6. James 6. anno 1579. *It is Statuted and Ordained that the President of the College of Justice shall be always chosen by the whole Senators of the said College.* Which Statute is confirmed by Act. 134. Parl. 12. James 6. wherein it is exprefly declared, *That the King with advice of the Estates, doth ratifie and approve all the Acts made either by his Majesties Predeceffors or by his Highnes himself before upon the institution of the College of Justice, and the Reformation of the abuses thereof.* Nor can it be denied, but the appointing that the President should be chosen by the whole Senators was designed as the Reformation of an abuse in the College of Justice, which either had not been provided against and obviated in the first Institution of the Session, or which had crept in afterwards. And as this was the Law about the Election of the President, so the Practice was always conformable thereunto, untill that my Lord *Staire* came to be Constituted President by King *Charles* the Second, and was illegally obtruded upon the Lords of Session without the being either chosen or approved by them. For from the time of the making the Act until then, there was not one that had ever sate President, but who had been Chosen by the Lords of the College of Justice, except Sir *John Gilmore* who upon being nominated and recommended by the King in the Case of the total Vacancy anno 1661. was approved and confirmed by the Estates in Parliament. But for the Lord *Proven*, the Lord *Urgburt* the Lord *Curribill*, Sir *Robert Spotswood*, and the Lord *Dury*, who were all that had been Presidents from 1579. Until 1661. they were every one of them chosen and admitted by the Lords of Session. Nor is it unworthy of Remark, that the Lords of Session, upon every Election they made of a President, declared that they did it in conformity unto and in pursuance of the Act of Parliament.

ment. And as King *Charles*'s departing from the Law in this particular, was one of the first steps towards Arbitrary Power, so it was both in order to farther Incroachments upon our Laws and Rights, and prepared the way for most of the Tyranny that he exercised afterwards. And as *Staires* assuming the Office of President, upon the illegal Choice of the forementioned King, was both an Affronting, and Betraying of the known Laws of the Kingdom; so his whole behaviour in that Station was of one piece and complexion with his entering upon it, being a continued Series of Oppression and Treachery to his Country. For besides that all his Verdicts between Subject and Subject, were more Ambiguous than the Delphick Oracles, and the occasion of the Commencement of innumerable Suits in place of the determining of any he was the principal Minister of all *Lauderdale's* Arbitrariness and of King *Charles*'s Usurpations. Nor was there a Rapine or Murder committed in the Kingdom under the countenance of Royal Authority, but what he was either the Author of, the Assister in, or ready to justify. And from his having been a Military Commander, for asserting and vindicating the Laws, Rights and Liberties of the Kingdom against the little pretended Invasions of *Charles* I. He came to overthrow and trample upon them all in the quality of a Civil Officer under *Charles* II. Nor is there a Man in the whole Kingdom of *Scotland*, who hath been more accessory to the Robberies and Spoils; and who is more stained and died with the Bloody Measures of the Times than this Lord *Staires*, who his Majesty hath been impos'd upon to constitute again President of the Colledge of Justice. And as an aggravation of his Crimes he hath perpetrated them under the veil of Religion, and by forms of Law: Which is the bringing the Holy and Righteous God to be an Authorizer and Approver of his Villanies, and the making the Shield of our Protection to be the Sword of our Ruin. But there being some hopes that the World will be speedily furnished with the History of his Life, I shall say no more of him, but shall leave him unto the expectation and dread of what the famous Mr. *Robert Douglas* foretold would befall him in his Person and Family, and of which having tasted the first Fruits in so many astonishing Instances, he may the more assuredly reckon upon the full Harvest of it. And the Method he hath lately begun to steer is the most likely way imaginable to hasten upon him and his, what that Holy, and, I might say, Prophetic Man denounced against them. For whereas the Nation would

would have been willing upon his meer withdrawing from Business, and not provoking their Justice by crowding into the Place in which he had so heinously Offended : To have left him to stand or fall at the great Tribunal, and to have indemnify'd him as to Life, Honor and Fortune here, upon the consideration of his having co operated in the late Revolution, and of his having attended upon his Majesty in his coming over to rescue and deliver the Kingdoms from Popery and Slavery : He seems resolved to hasten his own Fate, and through putting himself by new Crimes out of the capacity of Mercy, to force the Estates of the Kingdom to a punishing of him, both for them and for the old. But to return to what we are upon about the Right of Electing a President of the College of Justice ; It is excepted, to what hath been said, in proof that the Power is by Law in the Lords of Session to choose their own President ; that *Sir John Gilmore* was upon King *Charles* the Second's nomination approved and confirm'd in Parliament, *Anno 1661.* which was a devesting of the Lords of Session of it, and a vernal rescinding all the Laws by which that Power had been settled upon them : To which I have several things to reply, that will discover both the Impertinency of the Objection, and the Treachery of those who have insinuated it to the King.

First, It is acknowledged in the very exception, that the sole Choice of *Sir John Gilmore*, as President, was not in King *Charles*, seeing the Parliament had the Approving, Allowing and Admitting of him, which makes that case to differ very much from the Present. In which the Choosing of the President is not only taken away from the Lords of the Session, but the Approving and Admitting of him is denied to the Estates of the Nation in Parliament Assembled.

Secondly, What was done in Ordaining *Sir John Gilmore* President, was not a repealing of the Laws, by which the Choosing of the President is vested in the Lords of the Session, but was at most only a dispensing with them in that extraordinary case of a total Vacancy, and in reference unto a Person of a most unspotted Integrity, and unparalleled Knowledge in the Laws. Nor will any Man, pretending to acquaintance with Parliamentary Customs and Proceedings, reckon that a Law is therefore rescinded and abrogated because the Parliament hath seen Reason to supercede it in a single Instance, and in a particular Case. Laws once Enacted and Established are never accounted to be abrogated, unless by particular future Laws formally repealing them, or by posterior general

ral Statutes inconsistent with, and destructive of them. Nor do Two or Three particular Instances varying from, and repugnant unto them, bring them so much as into disuse and disuetude; but even in order to that, there must be immemorial Prescription against them, and that without being disallowed or complained of in Parliament.

Thirdly, What the Parliament did, *Anno 1661.* in the Case of Sir *John Gilmore*, it was not properly done by them in their Legislative capacity, but as a part of the Supream Authority of the Kingdom concurring with the King in an Act and Deed of the *Supremum imperium*, and illimitted Power of the Government, which the appointing of Judges for the equal Administration of Justice came to be at that season and conjuncture, by reason of the total Vacancy, and the impossibility that thereupon ensued of Choosing and Ordaining the Lords of Session, whereof the President is always one, in the ordinary Legal and Established Methods. What the King and the Estates of Parliament did in the case of that Vacancy of the Colledge of Justice, was much of the Nature of, and parallel unto, what the Estates alone have done upon the late Vacancy of the Throne, wherein they Acted not in the way of a Legislative Body; but in the vertue of that illimitted Power which resided in them, as Representatives of the whole People, and who knew no other Measures whereby to act, but what lay most in a tendency to the Publick Safety.

Fourthly, The King's having a Right to choose the President of the Session is disclaimed and ridicul'd by those very Persons that have advised him to challenge it: For my Lord *Staires*, in whose Favour, and in pursuance of whose Advice, his Majesty hath claimed a Right, and exerted an Authority of appointing a President, hath, by the Method of his entering upon that Office and Station, renounced the Legality of his Majesty's acting in that particular, and declared that he holds not his Place by vertue of the King's Choice and Designation. For after he had prevailed upon the King to elect and send him down President of the Session, the first Thing he did at their Meeting, and that in order to the throwing the blame upon his Majesty of all that had been transacted before, was to wheedle that overaw'd and pack'd Bench, to choose him for President of the College of Justice: Which as it shew's the Disloyalty and Treachery of the Man, so it testifieth and publisheth his Folly. For how could they be in a Capacity as Lords of Session to choose him for a President, that were not antecedently,

ly, legally, tryed and approved themselves? And who knowing their own unqualifiednes, both as to Literature and good Fame, made his Majesty's having nominated them an excuse from their undergoing a Tryal. For though it be both required by the Laws, and was accordingly given out all along here, that they should be tryed, yet Five of them being conscious unto themselves how little they answered the Qualifications prescribed in the Statutes, refused to submit to be examined, under a Pretence that they would not thereby weaken his Majesty's Right and Authority in his having elected them. And thus the King's Authority is doubly exposed; by those who call themselves the Ordinary Lords of Session, in excusing themselves from a Tryal, which was never designed they should do, seeing *Staires*, *Mersington* and *Newbyth*, were both appointed, and said to be in a Capacity to examin them: And then by him who is styled President, being so through its being made a Stale for his obtaining the Name, and renounced for the Choice of the Bench as that which alone must give him a Legal Title. Whereas if the King's choice of him be not according to Law, and sufficient to justifie his entrance upon the Office, Why did he abuse his Majesty in telling him that it was? And if it be the King's Right, and a part of his Prerogative, to elect the President, Why hath he sacrificed his Majesty's Honour, and given away his Legal Power, in the submitting to hold the Office by any other tenure? Howsoever we are come to be Gainers by this Carriage of *Staires*, how much soever the King is a looser by it. For his surrendring from the King the Right of choosing a President, is a Vindication of the Justice of the Parliaments Vote and Demand. Besides, here is an end put to that Pretence which they have been endeavouring to Sham upon the World, viz. That *Staires* was only restored to the Presidency of which he was violently dispossesed, and that he was not chosen unto it as unto a Place whereunto he had not a right. So that either the choice made at *Edinburgh* overthrows the Plea used at *London*, about his being meerly restored; or else that whereby they do here seek to justifie his Majesty's Proceedings in reference to *Staires*'s being President, condemns what the *Proteus* hath there betaken himself unto, of being elected by those called the Lords of the College of Justice. To which I will only add, That as he was never legally President before, so he is as little President now. His assuming the Office then, when he was not chosen by the Bench, as the Law ordains, made him an Usurper; and his entering upon the Place again, upon the choice of those that are

not

not Judges, by reason of their not being tryed as the Statutes appoint, leaves him under the same Crime and Imputation.

So that having now dispatched, all that is either Historical or Argumentative about the several Heads in difference between the Parliament of *Scotland*, and a few unadvised or ill designing Men about His Majesty: I shall shut up this Discourse with some Political reflections upon the whole. Whereof the first is, That it is not the having barely a good King that renders a People happy, but much of it must arise from his having good Ministers about him. For no Nation had ever a better Prince than we at present have, and yet we find there is cause of complaint by reason of the ill Counsellors that possess his ear. We do not think that he entertains them out of choice, yet that will not give his People ease, though it may for a while suppress their murmurings His Majesties being so little acquainted with Men at his first coming over, might lay him open to be misled in the choice of His Officers: But to continue to use them after he hath had sufficient means as well as opportunity of knowing their Characters, will leave an imputation not only upon his goodness, but upon his Wisdom. For as the People have no other way of judging of the goodness of their Prince, but by finding his Officers and chief Ministers to be such: so if these be not, they may possibly acknowledg *William* to be a good Man, but they will never believe that the King is so. And *Matchiavel*'s observation, That a Wise King will always find wise Ministers, is no more than what every Man is perswaded of upon the first Principles of Reason, and of common sense. I do acknowledg that ill Men have ways of thrusting themselves upon Princes, which they that are virtuous think too unworthy and below them to use. For whereas the latter are always modest, and seek no recommendations but from their own Merit; the former are importunate, and can both flatter and Bribe Favourites to speak well of them. It was a severe Prediction as well as Observation, which the late Prince of *Conde*, made upon the News of King *Charles* the Second's Death, and of his Brother's succeeding him. *viz.* That he was like to be well served ~~by~~ ^{through} having none about him, but his own Fools, and his Predecessors Knaves. How may Wise-Men then imagine his Present Majesty is like to be served, who though he hath not the Fools of the last Reign about him, yet he hath both the Knaves of that and of the former. Nor is it of any great advantage at least to *Scotland* to be delivered from the Fools of the last Government seeing there are weak Men enough besides those, and some of them trusted with the chief conduct of the *Scotch* Affairs. For how else could it be, that of all the Publick orders remitted thither, there

hath not been one which either the meeting of Estates, the Parliament, or the Privy Council have not voted to be illegal. In reference unto which, as we do acquit the King from all blame. Seeing he cannot be supposed to be acquainted yet either with the *Scotch Laws*, or with their forms, and does only sign what others prepare for, and offer unto him; so we are not willing to ascribe it so much to the treachery and malice of his Minister, as to his simplicity and weakness. Who though he may possibly be an honest Man, and indifferently versed in common Affairs, yet he hath no great knowledg of the Laws, and is but a Puny in the Politicks, by reason of which he comes to rely upon other Mens advice, who instead of instructing and assisting him to serve the King, make him a Tool for promoting ends and designs directly opposite to his Majesties Service and Interest. But then I should observe Secondly, That one illegal stop doth lead to many: Nor is one Arbitrary thing to be supported but by another. It hath been hitherto taken for an undoubted Truth, That though the Estates Assembled in Parliament have not alone a Legislative Power, so as to enact Laws, without the King, yet that they have the Supreme and Uncontravertible Power of declaring the Meaning, and Sense of those Laws that are already Enacted and Established. So that when the Parliament hath once declared the Sense and Meaning of any Law, all Courts of Judicature, as well as particular Persons, are bound to acquiesce in their explanation of that Law. And to divert the Parliament of this, is to strip them off one of their chiefest Priviledges, and to detract from and diminish their Authority, which is treason by the Law of Scotland. For it is expressly declared by *Act. 130. Parl. 8. James 6.* That *whoever in time coming shall take upon him, to impugn the Dignity and Authority of the three Estates, or shall seek or procure the innovation or diminution of the Power and Authority of the Three Estates, or of any of them, shall be guilty of Treason.* Yet when the Present Parliament had declared the sense of the Ancient Laws to be that the King in a total Vacancy could not appoint Judges without their being admitted by Parliament, the advance that had been made against our Laws in His Majesties assuming a Right of Electing and Authorizing them hath been seconded with an impugning, despising, and subverting that Authority of Parliament which we have been speaking of. Nor hath the Invasion upon Parliamentary Rights and Priviledges terminated here, but there hath been a further assault made upon them both by the Councils assuming the Cognizance of that, which was lodged before the Parliament, and by their A&tings determining in it contrary to the Vote, and Declaration of the Estates, who are the Supreme

Supream Judicature, and in conjunction with the King, the one Legislative ~~body~~ of the Kingdom. For it is an unquestioned Maxim, That when a matter is once brought and tabled before the Parliament, so as they have laid their hands upon it, that it is not afterwards to fall under the Cognizance, or Determination of the Council; or if any inferior Judicator, unless remitted expressly unto them by the Parliament it self. And therefore the Parliament having given a stop to the opening of the Signet, and to the sitting of the Session, till the King's further pleasure was made known to them, and until that matter should be brought to such an Accommodation, as was consistent with the preservation of the Laws of the Kingdom: It was a high invasion upon the Authority and Jurisdiction of the Parliament for the Council to meddle in it. But this they were aw'd unto by those who had given the King advice to choose the Lords of Session and President, and who knew no way to justify one illegality, but by another. Yea our Ministers, in order to make the first Act of invasion upon the Laws which they had thrust the King upon Successful, and to prevent their receiving a baffle upon their first setting out on the road of Arbitrariness, they sent menacing Letters to those that were nominated Lords of Session, threatening them with ruin, if they did not sit all the time that they were appointed; and had it not been for those Letters, several had forborn to act, as knowing they could not lawfully do it. And as the sending those Letters sheweth that the Ministers here were convinced that they had Counsellel the King to an illegal Thing, but which was to be supported in the same manner: So these Gentlemen of the long Robe, who contrary to their own Judgment, were influenced to sit, and to transgres known Laws, have declared how Unworthy and Unqualified they are, to be received and approved by Parliament, as Lords of the Colledge of Justice. And to Crown all these Miscarriages in Government with one more, his Majesties Ministers being fully sensible, that they whom they call Lords of Session, were neither Legally appointed, nor could Legally meet and sit; they therefore resolved forcibly to support what they had unjustly begun and done; and accordingly against the day and time those Gentlemen were to sit, they ordered all the Forces, which were drawn in ~~and~~ Numbers about Edinburgh, to be in a readiness upon ^{unusuall} beat of Drum, that what they had Arbitrarily begun, might be Violently maintained. Which as it was an ~~excuse~~ and using of his ^{applying} Majestys Troops, upon a much differing Design, than that for which the Parliament had consented to their being raised and paid: So it had

had been much more for his his Majesty's Honour, and the Benefit of his Kingdom, that they had been all employ'd against *Cannon*, who is still making Inroads, and committing Robberies upon several of his Majesty's Subjects; and who by the ill Conduct and Treasnable Council of some of his Majesty's Ministers, seems to have been connived at and forborn, since the last defeat that was given him, for no other reason, but that there may be a stand for other Rebels in due time to go unto. But that which I would observe Thirdly, and in the Last place is, That his Majesty for his own Honour and Safety, and for the peace and welfare of his People ought to make some Change and Alteration of his Ministers. For it is evident, That they who were employed as Instruments of Oppression, Rapine and Murther, under one ill Government, can never be of use unto nor for the reputation of a good. It is evident, That he is betrayed, nor is it so difficult to know by whom, and how. For Things speak when Men either dare not, or will not. And Advices are not to be judg'd of by the Quality and Profession of the Persons that give them, but by the tendency of the Counsels that are given. For example, they cannot design well unto his Majesty, who tell him, That he must not make haste to conquer his Enemies, until he have first screw'd up his Prerogative; and that he is to improve the dread his People are under of King *James*, for wresting from them what he can, before he attack him. Again, they cannot intend his Majesty's Interest, who would have him overlook the Crimes and Treasons that are daily committed against him: Seeing the conniving at Rebels can only be to incourage Rebellion. Again, they who advise him to be King only of a Party, and not of the whole People, have a mind he should be King of none. And to counsel him either not to use those in his Service, who are both willing to serve him, and would do it with the utmost Fidelity; or to use those whose Carriage speaks them to be in the Interest of his Enemies, is to have him betrayed instead of being served. Nor can they be for his Continuing upon the Throne, who would have hindered his Ascent unto it. And whosoever embarrasseth him with his Parliaments, and by it retards Succours for the Support of the War, can mean no less than that his Majesty and his Kingdom should become a Prey to King *James*, and to his Brother of *France*. And they who counsel him to go on where his Predecessors left off, have a Mind to see a New Abdication, though they were not for the Old. But what might be said upon this Head requireth rather an intire Discourse than to be confined unto a short Remark. And therefore all I shall add is, That as his Majesty must be infallibly lost, without a speedy Charge as to some of his Ministers; so he needs not to fear them, if they be but once thrust out of his Counsels; seeing all the hurt that they are able to do him is through their being there. And if he will but own himself, and assert his own Interest, he will have enough of those to stand by him, who have no Interest but what is his.

F I N I S.